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PACIFIC BELL TELEPHONE COMPANY

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CALIFORNIA SPORTFISHING
PROTECTION ALLIANCE,

Plaintiff,

v.

PACIFIC BELL TELEPHONE COMPANY,

Defendant.

CASE NO. 2:21-cv-00073 -JDP

**DEFENDANT PACIFIC BELL
TELEPHONE COMPANY'S STATEMENT
IN SUPPORT OF ENTRY OF FINAL
CONSENT DECREE**

Magistrate Judge: Hon. Jeremy D. Peterson

Complaint Filed: January 14, 2021

1 This case involves two underwater telecommunications cables. Pacific Bell installed the cables
2 in Lake Tahoe with approval from both the California State Lands Commission and the U.S. Army
3 Corps of Engineers. Plaintiff filed suit against Pacific Bell in 2021, alleging violations of the Resource
4 Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6972(a)(1)(B), and California’s Safe
5 Drinking Water and Toxic Enforcement Act of 1986, commonly known as “Prop. 65,” Health & Safety
6 Code § 25249.5, *et seq.* See ECF Nos. 1, 12. Pacific Bell denies these allegations. As detailed in the
7 attached reports, multiple experts have concluded that these cables pose no risk to human health or the
8 environment.

9 In September 2021, Plaintiff moved the Court to approve a consent decree under which Pacific
10 Bell agreed to remove the cables to avoid the distraction and expense of protracted litigation. ECF
11 No. 16. The consent decree was amended in October 2021 (ECF No. 18-1), and the Court approved
12 that amended consent decree in November 2021. ECF No. 22. In July 2023, after a series of Wall
13 Street Journal articles made claims about the safety of lead-clad cables in Lake Tahoe and elsewhere,
14 the consent decree was vacated to permit further investigation, analysis, and testing by environmental
15 scientists to confirm that the cables were not impacting water and sediment quality. ECF No. 49.

16 Pacific Bell asked nine leading scientists and environmental experts to investigate claims that
17 the lead-clad telecom cables in Lake Tahoe may raise a public health concern. These nine experts
18 have completed their analyses and determined that the cables do not pose any risk to human health or
19 the environment. Now that the claims regarding the cables have been investigated and disproven,
20 Pacific Bell has entered into a proposed Final Consent Decree and is prepared to fulfill its original
21 commitment to remove the cables.

22 Pacific Bell submits this Statement to provide the Court with the expert reports establishing
23 the safety of the cables and to address unfounded assertions made in Plaintiff’s Motion to Approve
24 regarding the impact of the cables on human health and the environment.
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1 **I. LEADING SCIENTISTS AND ENVIRONMENTAL EXPERTS HAVE CONCLUDED**
2 **THAT THE CABLES POSE NO RISK TO HUMAN HEALTH OR THE**
3 **ENVIRONMENT.**

4 Pacific Bell was prepared to disclose in this litigation nine experts who have analyzed
5 Plaintiff's claims regarding the cables and concluded that they do not pose any risk to human health
6 or the environment. These experts' reports are attached to this Statement in Support, and their
7 conclusions are summarized below:

8 1. Lead-clad cables are not a significant source of lead exposure to the public, nor are
9 lead-clad cables likely to become such a source of lead exposure in the future. The studies and
10 available data indicate that the potential environmental exposure from lead-clad communications
11 cables, if any, is negligible compared to background levels, and thus the additional risk, if any, is well
12 below that from other common sources of lead in the environment deemed "acceptable" by regulatory
13 agencies such as the United States Food and Drug Administration (FDA) and United States
14 Environmental Protection Agency (US EPA). Meier Decl., Ex. A (Report of Dr. David Eaton, Ph.D.,
15 Dean Emeritus of the University of Washington Graduate School, and Emeritus Professor of
16 Environmental and Occupational Health Sciences, School of Public Health, at the University of
17 Washington).

18 2. The cables do not pose a health risk to people. Exposure to Lake Tahoe water and
19 sediment near the cables does not measurably increase blood-lead levels and would not impact human
20 health. Meier Decl., Ex. B (Report of Dr. Rosalind Schoof, Ph.D., DABT, Fellow ATS, Ramboll US
21 Consulting).

22 3. There is no ecological risk to animals or plants in Lake Tahoe from the cables. Meier
23 Decl., Ex. C (Report of Dr. Paul Krause, Ph.D., Ramboll Americas Engineering Solutions).

24 4. The lead cladding in the cables is covered by steel and other strong materials that
25 prevent contact of lead with the water in Lake Tahoe. In the few places where the lead cladding is
26 exposed to water because the cable has been cut, a natural passivating (*i.e.*, protective) layer forms on
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1 the surface of the cable that limits lead release. Meier Decl., Ex. D (Report of Dr. Lawrence Eiselstein,
2 Ph.D., P.E., Exponent).

3 5. Under the geochemical conditions in Lake Tahoe, lead that is exposed to water is
4 naturally bound to the surface of the cables, and dissolved lead would be adsorbed onto the cables'
5 surface, limiting lead mobility. Further, the steel armor and, therefore, the internal jute-bitumen layers
6 were predominantly intact along the length of cables visually observed during field activities
7 undertaken in 2021 by Haley & Aldrich, and in 2023 by Ramboll. Visual inspections of Cable A and
8 Cable B revealed that a small portion of the cables had sustained damage and lacked the jute-bitumen
9 layers and steel armor. Relative to the total area of the cables surveyed, minimal lead surface area of
10 the cables is exposed and in direct contact with Lake water, limiting the interaction of Lake surface
11 water with the lead surface and, therefore, the potential for releasing lead. Meier Decl., Ex. E (Report
12 of Dr. Tiffany Thomas, Ph.D., Haley & Aldrich).

13 6. Lead is released into Lake Tahoe from many human-caused and natural sources,
14 resulting in background levels of lead unrelated to the cables. Meier Decl., Ex. F (Report of Dr.
15 Andrew Nicholson, Ph.D., Integral Consulting).

16 7. Any lead released from the cables would immediately reduce to non-detectable levels
17 that remain below or consistent with normal background concentrations of lead in Lake Tahoe. Meier
18 Decl., Ex. G (Report of Dr. Craig Jones, Ph.D., Integral Consulting).

19 8. Water system test data show that the cables in Lake Tahoe have not impacted drinking
20 water systems. Separate sampling of water from Lake Tahoe by the State of California at the intake
21 of the water system closest to the cables confirms lead was not detectable. Meier Decl., Ex. H (Report
22 of Alex Revchuk, D.Env., P.E., BCES, Exponent).

23 9. Multiple other tests of water and sediment in Lake Tahoe demonstrate the cables are
24 not adversely impacting water or sediment quality. Meier Decl., Ex. I (Report of Dr. Brian Drollette,
25 Ph.D., Ramboll Americas Engineering Solutions). In 2021, the Haley & Aldrich firm conducted a
26 field investigation of Lake Tahoe water quality. The Haley & Aldrich team collected water samples
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1 within a few inches of the cables in Lake Tahoe, and from locations farther away. The Haley &
2 Aldrich team concluded:

- 3 • The cables are not adversely impacting Lake Tahoe's water quality. (Haley & Aldrich
4 Report (ECF No. 33-1, Ex. A))).
- 5 • Lead was not detected in the samples collected nearest to the cables.
- 6 • The highest concentration of total lead was found in a reference location 3.5 miles away
7 from the cables, which was tested to determine background levels of lead in the Lake.

8 10. In June 2023, the Ramboll consulting firm conducted a field investigation of Lake
9 Tahoe water quality. The Ramboll team concluded:

- 10 • The cables are not adversely impacting Lake Tahoe's water quality. (Ramboll Water Study
11 (ECF No. 57-1, Ex. A))).
- 12 • The concentration of lead near the cables nearly matched background levels of lead in Lake
13 Tahoe.
- 14 • The highest concentration levels of lead detected near the cables was more than 200 times
15 lower than the EPA's action level for lead in drinking water.

16 11. In July 2023, Ramboll investigated the concentration of lead in Lake Tahoe's sediment.
17 The Ramboll study concluded:

- 18 • The cables are not adversely impacting Lake Tahoe's sediment. (Ramboll Sediment Study
19 (ECF 125-1, Ex. A))).
- 20 • All lead measurements were within or below background levels of lead in freshwater
21 sediment.

22 **II. THE PROPOSED SETTLEMENT IS FAIR AND REASONABLE.**

23 Pacific Bell respectfully requests that the Court approve the parties' proposed Final Consent
24 Decree. The proposed Final Consent Decree is fair and reasonable, it will avoid additional
25 unnecessary costs of litigation, and it allows Pacific Bell to fulfill its original commitment to remove
26 the cables in Lake Tahoe:
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- Pacific Bell agrees to remove the cables as soon as practicable following Court approval.
- The target is to complete removal by November 30, 2024 or in spring 2025 based on weather conditions, permitting, and the regulatory approval process.
- Pacific Bell will work with licensed professionals to remove the cables and will obtain all necessary permits and other regulatory approvals needed to remove the cables in an appropriate manner. The cables will be removed in accordance with those permits and approvals.
- The parties entered the proposed Final Consent Decree to avoid prolonged and costly litigation. The parties agree that nothing in the Final Consent Decree shall be construed as an admission as to any fact, finding, conclusion, or violation of law.
- The parties have reached no agreements regarding legal fees and costs, and any award of legal fees and costs shall be determined by the Court. Plaintiff's motion seeking its fees and costs is due October 31, 2024.

The Parties agree that no civil penalties should be paid under Prop. 65. This no-penalty resolution is appropriate given that: (1) testing and analysis by leading scientists and environmental experts demonstrates that the cables do not pose any risk to human health or to the environment; and (2) Pacific Bell has agreed to remove the cables.

CONCLUSION

For the foregoing reasons, Pacific Bell respectfully asks that the Court enter the Final Consent Decree.

DATED: September 18, 2024

Respectfully submitted,



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